IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30/09/2003

CORAM

THE HONOURABLE MR. JUSTICE P.K. MISRA

W.P.NO.688 OF 2002 AND W.P.NO. 689 OF 2002
and
W.P.M.P.No.1022 OF 2002

Shri Asad Cassim,
Proprietor,
M/s. Trans Globe Freight Forwarders,
Chennai 600 001. .. Petitioner in both WPs

-Vs-

1. Union of India,
Rep. by its Secretary,
Ministry of Finance,
North Block,
New Delhi.

2. The Comissioner of Customs,
Sea Port, Customs House,
33, Rajaji Salai
Chennai 600 001.

3. The Chief Commissioner of Customs,
Customs House,
33, Rajaji Salai
Chennai 600 001. .. Respondents in both WPs

Petitions filed under Article 226 of the Constitution of India for the issuance of Writ of Certiorarified Mandamus as stated therein.

For Petitioner : Mr. Habibulla Badsha
Senior Advocate for
Mr.E.S. Govindan

For Respondents : Mr.V.T. Gopalan,
Additional Solicitor General
assisted by
Mr.K. Ravindranath, ACGSC

:J U D G M E N T

Petitioner is the sole proprietor of M/s. Trans Globe Freight Forwarders, Chennai. He had filed an application for issuance of a Customs House Agent□s Licence. It is alleged in the petition that before 1997, the petitioner while functioning as Managing Partner of M/s. Integrated Freight Systems was carrying on business as Customs House Agent□s Licence and even though licence was valid till 2000, the same had been surrendered in 1997. The application filed by the petitioner was rejected on 22.12.1988 solely on the ground that the petitioner was not a □G□ Card holder and the employees R. Sasikumar, D. Suresh and M.G. Naganathan though holding □G□ Card, were not graduates. The aforesaid order of the second respondent was challenged in appeal before the third respondent, who has rejected the same on similar grounds. The orders passed by the respondents 2 & 3 are challenged mainly on the ground that those orders are based on misconception of Regulation 6. In

the connected writ petition, it has been prayed that Regulation 6 (a) of the Customs House Agents Licensing Regulations may be declared as ultra vires and unconstitutional.

2. The writ petitions have been resisted by the Union of India and other two respondents. It has been submitted by the Additional Solicitor General appearing on behalf of the respondents that Regulation 8 has already been upheld by the Supreme Court in the decision reported in 1996 (10) SCC 136 (FEDERATION OF CUSTOMS HOUSE AGENTS□ ASSOCIATIION AND OTHERS Vs. UNION OF INDIA AND OTHERS) and Regulation 8 has to be read along with Regulation 8 and in view of the decision of the Supreme Court that Regulation 6 is not ultra vires. The orders passed by the respondents 2 & 3 are also sought to be justified on merit.

3. Before considering the questions raised, it is necessary to notice the relevant provisions:-

Section 2(35) of the Customs Act lays down that □regulations□ means the regulations made by the Board under any provision of this Act.

Section 146 provide that no person shall carry on business as an agent relating to the entry or departure of a conveyance or the import or export of goods at any customs-station unless such a person holds a licence granted in this behalf in accordance with the regulations

Section 146(2), being relevant is extracted hereunder :

□ . . .
(2) The Board may make regulations for the purpose of carrying out provisions of this section and, in particular, such regulations may provide for -

(a) the authority by which a licence may be granted under this section and the period of validity of any such licence;

(b) The form of the licence and the fees payable
therefor;

(c) the qualifications of persons who may apply for a
licence and the qualifications of persons to be employed by a licensee to
assist him in his work as an agent;
(d) the restrictions and conditions (including the
furnishing of security by the licensee) subject to which a
licence may be granted;
(e) the circumstances in which a licence may be suspended or
revoked; and
(f) the appeals, if any, against an order of suspension or
revocation of a licence, and the period within which such appeals shall be
filed.

It is not disputed that appropriate regulations known as Customs House Agents Licensing Regulations, 1984 (hereinafter called the Regulations) have been made in exercise of power conferred under Section 14 6 (2) of the Customs Act, 1962.

Regulation 5, being relevant, is extracted hereunder :-

5. Application for licence. - (1) An application for a licence to
act as a Custom House Agent in a Customs Station shall be made in Form A and
shall inter alia contain the name and the address of the person applying; and

(2) If the applicant is a firm -

(a) the name and address of every partner of the firm, the firms
name, and
(b) the name of the partner or the duly authorised employee, who will
actually be engaged in the clearance of goods or conveyance through the
customs.

(3) If the applicant is a company -

(a) the name of each director, manager, managing director, and
(b) the names of director, manager or the duly authorised employee,
who will actually be engaged in the clearance of goods or conveyances through
the customs.

Regulation 6, on the interpretation of which the result of the present
litigation raised, is extracted so far as relevant here under :-

6. Conditions to be fulfilled by the applicant. - The applicant or
the person referred to in clause (b) of sub-regulations (2) and (3) of
Regulation 5 as the case may be, shall prove to the satisfaction of the
Commissioner that :

(a) the applicant is a graduate from recognised University and is an employee of a licensee and that he possesses a permanent pass Form G prescribed under regulation 20 and has the experience of work relating to clearance of goods through the Customs, for a period of not less than three years in the capacity of such a passholder:

Provided that the Commissioner may relax the possession of permanent pass in Form G to one year for reasons to be recorded in writing.

4. A perusal of Regulation 5 makes it clear that an application for a licence to act as a Custom House Agent can be made by an individual or a firm or a company. Where the application is filed by a partnership firm, the application in Form A is required to indicate the name of the partner or the duly authorised employee, who will actually be engaged in the clearance of goods or conveyances through the customs. Similarly, where the applicant is a company, the application is required to disclose the name of the director, manager or the duly authorised employee, who will actually be engaged in the clearance of goods or conveyances through the customs. The provisions make it clear that it is not always necessary that the partner or the director or the manager of the company be engaged in the clearance of the goods or conveyances through the customs, and an employee of a firm or a company can also be engaged in the clearance of the goods or conveyances through the customs. The above principle, which is applicable to a firm or a company, is also equally applicable to a case where the applicant is an individual proprietor.

5. Regulation 5 prescribes that an application for a licence to act as Custom House Agent shall made in Form A. Regulation 5(2) provides inter alia that if the applicant is a firm, the name and address of the partner or the duly authorised employee, who will actually be engaged in the clearance of goods or conveyances through the customs, should be indicated and similarly Regulation 5(3)(b) provides that if the applicant is a company, the name of the director, manager, managing director or the authorised employee, who will actually be engaged in the clearance of goods or conveyances through the customs, should be indicated.

6. The conditions to be fulfilled by the applicant, as contained in Regulation 6, have to be read along with the provisions contained in Regulation 5 as well as other regulations and the statutory Forms. The expression "the applicant is a graduate" is also to be understood in the appropriate context. Where the application is filed on behalf of the firm or a company, this clause cannot be construed as to mean that all the partners or the shareholders or the director of the company must be graduates, though the in the context of things it may be understood to mean that the person who is incharge of the company is a graduate. The subsequent expression in Regulation 6(a) to the effect
" . . . is an employee of a licensee and that he possesses a permanent pass in Form G prescribed under regulation 20"
has also to be understood in the context of Regulation 5. Where the applicant himself is the proprietor, it cannot be expected that simultaneously he shall

also be an employee of a licensee or should possesses a permanent pass in Form G.
Form G, which is an identity card issued under Regulation 20, is required to be issued to an employee authorising such employee to transact business at the relevant customs house on behalf of the employer.

7. A careful scrutiny of all the provisions construed harmoniously makes it clear as follows :-
An application can be filed by an individual, by a firm or by a company and an individual himself can do the work of an employee without engaging anybody. An individual or a company or a firm may engage an employee to undertake the actual work of clearing. In the latter event, it is not necessary that such individual or the partner or the director of the company to himself possess an identity card in "G" Form. If it is construed that an individual has to be an employee under a licensee in order to be eligible to a licence, such construction may give rise to hostile discrimination between an individual or a firm or a company. If the Regulations, particularly Regulation 6, are construed in the manner indicated, the question of hostile discrimination would not arise, and therefore, such interpretation should be preferred.

8. Regulation 8 contemplates grant of temporary licence and it is extracted here under :-

8. Grant of temporary licence. - (1) Any applicant whose application is received within the last date specified in Regulation 4 and who satisfies the requirements of Regulations 5 and 6, shall be permitted to operate as Custom House Agent at the Customs Station for which the application is made initially for the period of one year against temporary licence granted by the Commissioner in this regard in Form B (See Form No.48 in Part 5):

Provided, that when evidence is produced to the Commissioner that the applicant has already availed of two chances for qualifying in the written or oral examination prescribed in these regulations and would like to avail of the third chance as soon as the next examination is held in terms of Regulation 9 and that the applicant has been able to account for the minimum volume of work prescribed for such agents in the course of one year's working, the Commissioner may extend the aforesaid period of one year for which the temporary licence has been granted by another six months or such further period not exceeding one year to enable the applicant to avail of the third chance for qualifying in the examination in terms of Regulation 9. While granting such extension, the Commissioner of Customs shall satisfy himself that the requirements of Regulations 10(1)(a) and 10(1)(b) had been fully met by the applicant.

(2) Any person, whose application for grant of temporary licence under sub-regulation (1) of regulation 8 is rejected by the Commissioner of Customs may represent to the Chief Commissioner of Customs or Chief Commissioner of Customs and Central Excise, as the case may be against such order rejecting the grant of a temporary licence, within 30 days of the communication of the impugned order.

(3) In case the number of applicants fulfilling the conditions prescribed under regulation is more than the number of licences to be issued as assessed under regulation 4, the Commissioner may adopt seniority in experience as □G□ pass-holder of such applicants as the criterion to give precedence to the applicants :

Provided that if more than one applicant has the same period of experience, the applicant who is older in age shall get precedence.

Regulation 20 relates to employment of persons and Regulation 20 (6) which relates to issuance of identity card is extracted here under :-

20(6) The Assistant Commissioner of Customs or Deputy Commissioner of Customs shall issue an identity card to every employee of a Custom House Agent, -

(i) in Form G (see Form No.53 in Part 5), in case he has passed the examination referred to in sub-regulation (3),

(ii) in Form H (See Form No.53A in Part 5), in case he has not passed such examination,

(iii) and every such person shall, at all times when he transacts the work at the Customs Station, carry such card with him and produce it for inspection on demand by any officer of the Customs Station.

9. It is the contention of the petitioner that Regulations 5 & 6 contemplate that a duly authorised employee can be engaged to actually work as customs house agent. Where such licence is to be given to a firm or a company, it is not necessary that all the partners of the firm or the directors of the company should possess a pass in Form G and it is sufficient if the employee, who is authorised to work as customs house agent, has got such permanent form in Form G. It has been further contended that since the petitioner has engaged three employees, who hold such permanent passes, rejection of the application of the petitioner for the issuance of temporary licence to operate as the customs house agent is arbitrary.

10. A close scrutiny of Regulation 6 read with Regulation 5 as well as the relevant forms, namely Form A, Form C and Form G, would indicate that under 20(3) a person appointed under 20(1) is required to pass an examination. Under second proviso to 20(3), such a person is required to have passed 10th standard of the Central Board of Secondary Education or its equivalent before his employment under 20(1). Under Regulation 20(6), an identity card is to be issued to every employee in Form G in case such an employee has passed the examination contemplated under 20(3) and in Form H, which is a provisional identitycum authority card, in case he has not passed such examination contemplated under 20(3).

11. A combined reading of Regulations 5,6 & 20 along with Forms A, B,C and G makes it amply clear that in case the proprietor or the

company or the partnership firm intends to employ some person, it is not necessary for such applicant to possess a permanent pass in G Form. The scheme of the provisions indicates that a person can be employed to act actually as the agent and in such an event, it is not necessary for the partnership firm or the company or the proprietor for that matter to have the Form G pass.

12. Any other contention would give rise to contradictory position. Where the partnership firm or the company is the applicant, licence is to be given in such company's name or the partnership firm's name. Similarly, where the proprietor is the applicant, licence is to be given in the name of the proprietor. It is open to a partner or a director or to the person himself to be the actual agent. In the alternative, such firm or company may engage an employee. What required is that the person who actually act as the agent must have a pass in Form G.

13. For the aforesaid reasons, the orders passed by the respondents cannot be sustained and are hereby quashed and the respondent No.2 is directed to consider afresh the question of issuance of a temporary licence. If it is found that the petitioner has employed persons having pass in Form G, temporary licence in favour of the petitioner cannot be refused merely on the ground that the petitioner does not possess such pass in Form G. The writ petitions are accordingly allowed to the extent indicated. No costs. Consequently, WPMP.No.1022 of 2002 is closed. In view of the conclusions reached, the alternative prayer for invalidating the provisions of Regulation 6 does not arise.

Index : Yes
Internet: Yes

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